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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of	)	
	)	
Implementation of the Local Competition	)	CC Docket No. 96-98
Provisions in the Telecommunications	)	
Act of 1996	)	

To the Commission

COMMENTS OF MGC COMMUNICATIONS, INC.

Kent F. Heyman, General Counsel
Scott A. Sarem, Assistant Vice President
Richard E. Heatter, Assistant Vice President
MGC COMMUNICATIONS, INC.
3301 N. Buffalo Drive
Las Vegas, NV 89129
(702) 310-1000

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SUMMARY

Three years ago the Telecommunications Act of 1996 was enacted to bring fruites of a competitive local phone market to American consumers. Since that time a variety of factors have emerged to impede the emergence of true competition. Today, we find ourselves at a cross-roads. Amazing new technologies, not dreamed of even several years ago have changed the competitive landscape.. However, the benefits of these new technologies can only be realized in a truly competitive market. MGC believes that the Commission must play an instrumental role in enabling the development of competition in the local exchange, thereby accelerating the implementation of new technologies. To that end, MGC maintains that the Commission should reaffirm, with several exceptions, the UNEs set forth in its *Local Competition First Report and Order* as a national minimum set of that will promote the deployment of facilities-based competition.

MGC believes that application of the Section 251(d)(2) necessary and impair standards compels the unbundling of at least the majority of the seven UNEs previously identified by the Commission and several new UNEs critical to the delivery of broadband data services. In its comments, MGC addresses existing and new UNEs that are essential to the entry plans of facilities-based CLEC's. MGC believes that not all seven original UNEs should continue as UNEs. Specifically, MGC believes that the Commission may remove switching, operator services and directory assistance, as well as SS-7 signalling.

Application of the Section 251(d)(2) unbundling standards demonstrates that loops, the NID, interoffice transport, and OSS meet the "impair" test, and therefore should remain on the Commission's national, minimum list of UNEs. Significantly, the definitions of those UNEs should be modified to make explicitly clear that: (1) cross-

connects must be included with loops; (2) all varieties of loops, including "clean copper," high capacity, and dark fiber loops, must be unbundled; (3) loop equivalents must be provided where IDLCs are deployed; (4) "entrance facilities," high capacity transport, and dark fiber transport facilities must be unbundled

Consistent with the Section 251 standards, the Commission also should establish several new UNEs critical to the development of widespread local competition and the delivery of broadband services. Indeed, facilities-based competitors' ability to deliver alternative service offerings to consumers has been and will continue to be diminished materially by the absence of unbundled access to ILEC extended link, intraMTE wiring, data, and multiplexing/aggregation/routing facilities.

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Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
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COMMENTS OF
MGC COMMUNICATIONS, INC.

MGC Communications, Inc. ("MGC") hereby submits these comments on the Federal Communications Commission's ("FCC" or "Commission") *Second Further Notice of Proposed Rulemaking ("FNPRM")* in the above-captioned proceeding.[1]

I. Introduction

MGC is a rapidly growing integrated communications services provider offering facilities-based local, long distance, voice and data services to residential and small business consumers. To date, MGC has raised over $315 million dollars, enabling it to deploy seven switches, as well as over two hundred fifty collocations in five states. This network deployment has given MGC an addressable market of over 12 million access lines and places MGC in a unique position to provide facilities-based voice, data, and Internet services to the residential and small business consumer. MGC offers the forgotten residential and small business consumers a true alternative to the ILEC and

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1 *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *Second Further Notice of Proposed Rulemaking* (rel. Apr. 16, 1999) (*"FNPRM"*).

brings the benefits of the competition envisioned by the 1996 Telecom Act to its intended beneficiaries.[2]

MGC applauds the Commission's efforts to ensure that the Telecommunications Act of 1996 enables true competition. The issues identified in the NPRM directly impact the deployment of competitive telecommunication services. Fundamentally, the Commission must promulgate a national list of Unbundled Network Elements ("UNEs"). This list will create certainty in planning and provisioning ubiquitous product offerings by CLECs throughout the country. Next, the Commission must recognize the following as UNEs based on the necessary and impair standard[3] articulated by the Supreme Court:

- Loops
  - 2 wire analog loops.
  - xDSL capable loops.
  - Loops served by pair gain or digital loop carriers.
  - High Capacity Loops - DS1, DS3, etc.
  - "Dark Fiber" Loops
  - Cross-Connects should be included as part of the loop.
  - Subloop Elements
- Network Interface Device ("NID")
- Interoffice Transport
  - FCC must clarify that transport is both between ILEC offices, and between an ILEC office and a CLEC point of presence.
  - Dark Fiber must be made available between end offices.
- High Capacity Transport

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[2] "Central to competition to the consumer in this legislation is opening the local telephone network to competition." 141 CONG.REC. H8284 (daily ed. Aug. 2, 1995) (statement of Rep. Fields, a sponsor of House bill 1555).

[3] This document does not provide an exhaustive discussion of the necessary and impair standard which is addressed in detail in the comments being filed by Association for Local Telecommunications Services ("ALTS"), and in this proceeding which MGC concurs. Instead, MGC devotes it comments to providing a practical experienced-based perspective regarding which network elements must be made available on an unbundled basis under the Act.

  - DS1, DS3, SONET OC speeds
  - Dark Fiber
  - Dedicated UNE Sonet Terminals
- Operations Support Systems

- Inside Wire
  - Necessary to quickly isolate trouble for a customer affecting issue.

Next, under the same necessary and impair standard, the Commission should deem the following existing UNEs as unnecessary in light of the fact that they are generally available from vendors other than ILECs:

- Switching
- Operator Services and Directory Assistance
- SS-7 Signalling

The Telecommunications Act of 1996 ("1996 Act") was enacted with the dual purpose of the benefits of bringing competitive of local phone service, as well as to promoting the development and deployment of new technologies to the American consumer. However, a variety of factors have impeded the emergence of true competition, as well as the deployment of technology. The industry finds itself awash with new technologies, presently capable of increasing telecommunications services exponentially at lower costs to consumers. However, these benefits can be realized only in a competitive market. Using the power given to it under the 1996 Act, the Commission should act to ensure that the local telephone marketplace is truly competitive, and is conducive to investment, innovation, and meeting the needs of the consumer. MGC believes that the Commission must be diligent in ensuring the

development of competition in the local exchange, thereby accelerating the implementation of new technologies.

Initially, both Congress and the Commission envisioned that local competition would develop through resale. However, as competition in the local exchange marketplace has developed, many new entrants have discovered that resale is neither practical nor profitable. As local competition develops, facilities-based competitive local exchange carriers ("CLECs") are the entities left to pull the laboring oar in the penetration of the local service monopolies. Facilities-based CLECs are spearheading the movement toward the ubiquitous provision of advanced telecommunications services to customers. To ensure that progress continues, the Commission must identify as UNEs those elements necessary to provide ubiquitous service to residential and business consumers in the same territory and at a similar cost as an ILEC. Therefore, MGC submits that the FCC develop and implement detailed national rules that will promote the deployment of facilities-based competition.

A. MGC Provides Competitive Local Telephone Service in the Manner Envisioned by Congress Under the 1996 Act.

MGC provides local, long distance, and enhanced services to residential and small and medium sized business consumers. MGC's network strategy consists of deploying its own switching equipment, collocating interconnection equipment in ILECs central offices ("COs"), leasing fiber optic transmission capacity from ILECs, and leasing local loops from ILECs to provide a facilities-based service offering to all ILEC customers in a given wire center. MGC is one of the only CLECs in the United States who offers a facilities-based residential alternative to the ILEC. The manner in which MGC has

deployed its network enables it to offer an ubiquitous telecommunications choice to consumers in its service territories.

MGC is uniquely situated to offer competitive local telephone service to suburban areas, primarily comprised of residential customers and small to mid-size businesses that are not in the major commerce centers. Rather than competing for the large business accounts sought by most carriers, MGC focuses on the largely forgotten residential customer -- and strives to provide that consumer with a true choice.

MGC has purchased over 80,000 unbundled loops in the Nevada, California, Illinois, Georgia, and Florida markets where it currently provides service. As a result MGC has a great deal of practical experience which should inform the Commission and help it understand the realities of the operational and customer care issues that CLECs face in markets that are not yet truly competitive.

II. NATIONAL UNIFORM, MINIMUM UNBUNDLING STANDARDS REMAIN ESSENTIAL TO THE DEVELOPMENT OF LOCAL COMPETITION

MGC currently operates in five states with plans to enter additional markets in the next year. MGC concurs in the Commission's tentative conclusion that it "should continue to identify a minimum set of network elements that must be unbundled on a nationwide basis". As the Commission observes, there is nothing in the Supreme Court's decision that calls into question its decision to establish minimum national unbundling requirements.[4] The rationale supporting this conclusion remains as valid today as it was

[4] *FNPRM* at ¶14.

three years ago when the Commission adopted it in its *First Report and Order.*[5] There, the Commission concluded that, by identifying a specific list of network elements that must be unbundled, applicable uniformly in all states and territories, it would best further the "national policy framework"[6] established by Congress to promote local competition.[7] Specifically, the Commission found that a national list would: (1) allow requesting carriers, including small entities, to take advantages of economies of scale; (2) provide financial markets with greater certainty in assessing competitors' business plans; (3) facilitate the states' ability to conduct arbitrations; and (4) reduce the likelihood of unnecessary litigation regarding the requirements of section 251(c)(3) that strains resources of CLECs and State commissions.[8]

Three years of experience in implementing the 1996 Act validates the Commission's foresight in adopting minimum national unbundling standards. This experience demonstrates that uniform nationwide standards are no less necessary today, as local competition is still very much in its development stage. In fact, the Commission recently affirmed its minimum national standards rationale in its decision to expand its minimum national collocation requirements.[9] There, the Commission emphasized that

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5 *Implementation of the Local Telecommunications Provisions of the 1996 Act,* CC Docket No. 96-98, *First Report and Order,* 11 FCC Rcd 15499 at ¶¶ 241-48, 281-83 (1996) (*"Local Competition First Report and Order"*).

6 S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 1 (1996) (Joint Explanatory Statement).

7 *Local Competition* First *Report and Order* at ¶¶241-48.

8 *Id.*

9 *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, *First Report and Order, and Further Notice of Proposed Rulemaking,* ¶ 23 (rel. Aug. 7, 1999) (*"Advanced Services Collocation Order"*).

such action was necessary to further the pro-competitive goals of the Act and to encourage competitors' deployment of advanced services.[10] MGC and other CLECs have raised significant amounts of capital from public markets based on the assumption that the Commission's national rules will help promulgate competition. Even with the actual list of UNE's available to date, MGC and other CLECs frequently need to arbitrate or litigate claims against ILECs. Reaffirming a national list of UNEs as set forth herein will ease the emergence of true facilities based local competition.

MGC also supports the Commission's tentative conclusion to continue to allow the state commissions to impose additional unbundling requirements, pursuant to Section 251(d)(2).[11] This approach effectively has allowed the states to function as laboratories for local competition. It has produced numerous "best practices," including dark fiber unbundling and combinations requirements which MGC believes are essential to the development of facilities-based local competition and, therefore, should be incorporated into minimum national standards. Allowing states to impose additional unbundling requirements also may afford states the flexibility to spur competition where it is slow to develop or to encourage the deployment of advanced services pursuant to their own duties under Section 706.

States should not be empowered to eliminate UNEs. Such an approach runs counter to every rationale put forth by the Commission in favor of national minimum standards, as it would invite state-by-state erosion of the national list of UNEs that now serves as the bedrock foundation of local competition. Allowing states to remove UNEs

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10 *See id.* at ¶¶ 23-24.

11 *FNPRM* at ¶ 14.

from the national list would generate onerous litigation burdens that tax the resources of would be many small and medium sized CLECs.

State-by-state dismantling of the Commission's national minimum unbundling standards is in no way compelled by Section 251(d)(2) or the Supreme Court's decision.[12] Rather, it is not in the public interest to create a framework by which ILECs can utilize their local clout to persuade state commissions to dismantle the federally mandated UNE regime. Additionally, business certainty and administrative necessity demonstrate the need for a national list of UNEs. To the extent that the Commission feels compelled to address geographic variations in the availability of UNEs, MGC believes it should do so through use of a waiver process in which an ILEC would bear the burden of proof in demonstrating that neither the necessary and impair standards, nor the public interest requires unbundling of a particular UNE in a specific state.

III. APPLICATION OF THE NECESSARY AND IMPAIR STANDARDS COMPELS RETENTION OF THE MAJORITY OF EXISTING UNEs AND THE ESTABLISHMENT OF NEW UNEs CRITICAL TO THE DELIVERY OF BROADBAND DATA SERVICES

MGC believes that application of the Section 251(d)(2) necessary and impair standards compels the unbundling of at least the majority of the seven UNEs previously identified by the Commission and several new UNEs critical to the delivery of broadband data services. Below, MGC addresses existing and new UNEs that are essential to the entry plans of facilities-based CLEC's. MGC believes that not all seven original UNEs should continue as UNEs. Specifically, MGC believes that the Commission may remove switching, operator services and directory assistance, as well as SS-7 signalling. The

primary reason that MGC takes this position is that these three UNEs are generally available from third parties in a cost effective and efficient manner.

As the Commission promulgates a national list of UNEs, MGC submits that the Commission should craft several new UNE rules in order to reflect the Supreme Court's ruling, as well as to promote the public interest in, the development of local facilities based competition. Therefore, MGC suggests that the following UNEs be adopted in light of the Supreme Court's decision:

- Loops
- NID
- Interoffice Transport
- High Capacity Transport
- Operations and Support Systems
- Inside Wire
- Interconnection Trunking

With the implementation of these UNEs, CLECs like MGC will be able to offer a cost-effective residential and small business integrated voice and data product.

A. The Commission Must Retain its, Loop, NID, Transport, and OSS UNEs

As mentioned above, MGC provides local voice and data services by deploying Nortel DMS 500 switches, collocating remote switches or access nodes in ILEC central offices, and leasing local loops from the ILEC to access the end-user residential and small business consumer. The local loop is then connected to the "NID to connect the customer to MGC's network. For competition to truly flourish, the Inside Wire must be unbundled so that the ILEC is required to test for loop trouble through to the customer's jack-panel. MGC would not be in a position to offer ubiquitous service to all potential

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[12] *AT&T Corp. v. Iowa Utils. Bd.*, 118 S.Ct. 879 (1998), *aff'd in part, rev'd in part,* 119 S.Ct. 721 (1999) (*"AT&T"*).

customers in a given ILEC market unless the ILEC is compelled to unbundle the transport and loops necessary to offer a competitive service to customers of the ILEC monopoly.

The ubiquitous nature of the rate-payer financed ILEC transport networks also remains critical to the infrastructure of facilities-based local competition. Current alternatives are severely limited in terms of ubiquity, capacity and pricing. Effective and efficient wholesale alternatives have not developed sufficiently, but should continue to advance in coming years. Finally, there is no question that OSS remains an essential UNE under any interpretation of the Section 251(d)(2) standard. The Commission's Section 271 decisions and the third party testing procedures adopted by many state commissions affirm this fact.

1. The Commission Must Continue to Require Unbundled Access to and Broaden the Definition of Local Loops

MGC is reliant on the loop to offer local voice and data service to residential and small business consumers. MGC's experience over the last three years in five ILEC territories has proven that ILECs will exploit a narrow definition of local loop to deny CLECs access to certain customers. In order to provide ubiquitous voice and data services to American consumers, MGC proposes that the following types of loops be included in any definition of local loops:

- 2 wire analog loops.
- xDSL capable loops.
- Loops served by pair gain or digital loop carriers.
- High Capacity Loops - DS1, DS3, etc.
- Cross-Connects should be included as part of the loop.

Without access to loops, MGC would not be in a position to offer facilities based voice and data services to residential and small business customers. The loop is a bottleneck facility that has been uniformly deployed by ILECs through many years of rate-payer financed network infrastructure. The loop is the only means by which ubiquitous service may be offered to customers in a given ILEC territory. Without local loop access, local competition will never reach the residential consumer. In some instances, the ILECs have denied MGC access to the local loop, thereby precluding consumers the benefit of competition.[13] All loops must be unbundled and made available to all CLECs willing to provide facilities based services.

Loops are essential bottleneck facilities that qualify for unbundling pursuant to Section 251(d)(2). Three years of loop unbundling experience have demonstrated that loops come in many denominations – none of which are "proprietary."[14] Therefore, the "impair" test applies and the Commission must determine whether removal of the loop

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[13] In GTE, Ameritech, and Bellsouth territories, MGC is not permitted to purchase loops that serve ILEC customers through remote devices or digital loop carriers. However, in Pacific Bell and Sprint sell, MGC the loop and the respective ILEC does what it must for MGC to provide service to a customer located behind a remote switch, digital loop carrier, or pair gain device. Obviously, the loop should be made generally available regardless of which method the ILEC chooses to deliver it.

[14] MGC submits that loop unbundling does not reveal access to CPNI or information and processes protected under intellectual property laws, and thus loops are not "proprietary" as set forth in Section 251(d)(2)(A) and defined herein. MGC notes that this conclusion is consistent with the Commission's previous determination that loops are not proprietary in nature. *See Local Competition First Report and Order* at ¶ 388.

unbundling requirement would materially diminish competitors' ability to compete. All loops clearly meet that test.[15]

ILECs may argue that CLECs are able to provision loops in the same manner as ILECs. This premise is wholly inaccurate. MGC currently has more than 12 million addressable loops in five states. In order to service even 10% of its potential customer base, MGC would be required to amass the necessary permits, get the appropriate environmental waivers, and expend an enormous unsubsidized amount of capital to service potential customers. Apart from the obvious capital and "speed to market" constraints, this would impose on new market entrants, it is impractical to assume that a competitor should be required to mirror an 100 year old monopoly's network that has been financed by taxpayers. Competitors' are largely unable to approximate the ubiquity of ILEC plant and the economies of scale and scope that factor into the ILECs' cost structure.[16] Even in densely populated areas, it is unreasonable to expect CLECs to be able to convince investors to duplicate the ILEC loop plant. Further, self-provisioning, in most instances, would entail significant delay in bringing the CLEC product to market. MGC and other CLECs must have access to all loops in order to offer ubiquitous local service in the manner contemplated by the Act.

a. Two-Wire Loops

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15 MGC notes that the Commission conducted an impair analysis for loops in its *Local Competition First Report and Order,* and reasonably concluded that the standard had been met. *Id.* at ¶ 378. With the materiality standard articulated by MGC in place, the FCC may and, in fact, must reach the same conclusion in its application of the impair test on remand.

16 *Id.* at ¶378.

MGC provides voice grade service over two wire analog loops. This two-wire loop is the essential facility needed to provide Plain Old Telephone Service ("POTS"). In the five states in which MGC operates it has purchased more than 80,000 loops. Additionally, MGC has proven that it may provide xDSL over a non-conditioned two wire loop for a distance up to 18,000 feet with no service degradation. MGC is able to offer an integrated voice and data product over existing copper loops.[17]

Without the two wire loop, MGC would not be capable of providing an integrated facilities based voice and data service. Additionally, MGC and other CLECs should be allowed to provide whatever service they deem practical or economical after the loop is leased. It is of no concern to the ILEC what the loop is being used for once the loop has been migrated from the ILEC network to the CLEC network. However, as discussed below, there are instances where MGC and other CLECs may need to lease xDSL capable loops that have been conditioned to support broadband services. Moreover, nothing has transpired in the last three years to question the validity of the Commission's conclusion that "[r]equiring incumbent LECs to make available unbundled local loops will facilitate customer entry and improve customer welfare."[18]

b. xDSL Capable Loops

In some cases, CLECs like MGC need to purchase conditioned xDSL capable loops from ILECs. Just like the ILEC, MGC may have a customer that requires a conditioned loop equipped with digital repeaters. In those cases, ILECs must be required

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17 ILECs such as SBC in California have recently indicated that it will not "allow" CLECs to use "non-conditioned" loops to provide xDSL service. Because MGC offers both choice and data over the loop, SBC should not be allowed to dictate the type of service MGC chooses to provide over a leased loop.

18 *Local Competition First Report and Order* at ¶378.

to provide CLECs xDSL capable loops. The ILECs should be allowed to recover the cost of providing a conditioned loop through the TELRIC costing methodology.

ILECs such as Pacific Bell, GTE, Sprint, Ameritech, and Bellsouth have announced plans to offer their local exchange customers a cost-effective product via xDSL technology. The most critical aspect of the xDSL capable loop is that it is, for the most part, provided over an existing copper loop that has been conditioned to support broadband services. The only manner by which facilities-based CLECs may compete with the ILECs' data offering is to be afforded unabridged access to conditioned loops so that CLECs may mirror ILEC networks. Accordingly, compelling ILECs to provide CLECs access to conditioned loops meets the impair standard articulated above.

c. Loops served by remote switches, pair-gain devices, or digital loop carriers

MGC provides facilities based voice and data services predominantly to the areas that surround larger metropolitan areas. Essentially, MGC provides a telecommunications choice to the residential and small business consumers located in America's suburbs. A by-product of providing service to areas other than the main downtown or commercial centers is that development is fairly recent. Consequently, rate centers are often either rural or formerly rural. In an effort to provide cost-effective service to rural areas, most ILECs have deployed loops served by remote switches, pair-gain devices, and digital loop carriers. Generally, the ILEC serve customers out of remote terminals through a digital rather than an analog loop. CLECs like MGC cannot provide service to those customers served by digital loops unless the ILEC provides translation equipment that allows the CLEC to provision the service from a device other

than the remote switch, pair-gain device, or digital loop carrier. Curiously, not all ILECs allow CLECs to provide service to ILEC customers served by digital loops. Therefore, the Commission must act to include an all encompassing definition of loops so that ILECs may not game the regulatory regime and deny CLECs access to all ILEC customers under the auspices of a technical loophole.

Not all ILECs treat digital loops the same. For instance, Pacific Bell and Sprint will provide MGC with access to their loops without regard to whether the loop is served by a remote switch, pair-gain device, or digital loop carrier. Rather, Pacific Bell and Sprint will either rearrange facilities or provision a digital loop on a D-4 channel bank where MGC is collocated allowing MGC to provision the loop off the channel bank. Sprint and Pacific Bell do not charge any additional amount for MGC to acquire a loop in this manner.

Ameritech and GTE, on the other hand, are less cooperative. In Ameritech territory, MGC cannot serve any ILEC customer served by a digital loop. In fact, in certain areas, such as Naperville, Illinois, MGC is precluded from serving more than 50% of the consumers served by the Ameritech- Naperville central office. GTE's policies and procedures are even more egregious. GTE not only precludes MGC from providing competitive service to customers served by digital loops and remote switches, it does not notify MGC (in most cases) of its inability to serve a particular customer until the day the customer is scheduled to convert its service from GTE to MGC. GTE's proposed solution to this inequity is to offer that MGC may purchase a D-4 channel bank (approximately $34,000), collocate it in a remote terminal and then provide service to the customers MGC seeks to serve. Not only is this suggestion contrary to industry

standards, it drastically increases the cost of customer acquisition. Therefore, GTE has effectively precluded MGC from competing for a certain class of GTE customer.

The proliferation of digital loops acts as a barrier to competition and forecloses any opportunity for consumers who are served by digital loops to benefit from the fruits of competition. Therefore, the Commission should include digital loops served by remote switches, pair-gain devices, or digital loop carriers in its definition of loops.

d. High Capacity Transport Loops

With the advent of broadband services and the needs of larger business customers, high capacity loops are becoming more necessary to compete with the ILECs. ILECs will claim that high capacity transport is available from third part sources and is generally available. That statement may be true for major commercial centers but is not true for second and third tier markets which surround major cities. However, the need for high capacity transport loops is no less acute in the second tier markets than in the first tier markets. Nonetheless, the demand is not great enough for competitive access providers to build ubiquitous fiber to the suburban areas of the first tier markets. Therefore, the only place MGC can purchase ubiquitous high capacity transport is from the ILEC.

ILECs should be required to offer all loops to CLECs at TELRIC based prices. Because of the disparity between contract and tariff rates for the same transport, the FCC should explicitly rule that all loops be available at TELRIC-based prices. To illustrate this problem, MGC can purchase a T-1 loop from Pacific Bell for $88 per month out of its interconnection contract. The same T-1 loop from the Pacific Bell tariff would cost MGC approximately $700. The price MGC pays depends on how it provisions the T-1 to its customer. If MGC provisions the T-1 from the customer's premises to the ILEC

central office where MGC is collocated, MGC qualifies for the UNE rate of $88 dollars per month. However, if MGC would rather provision the T-1 from the customer's premises to MGC's host switch, Pacific Bell would require MGC to pay a tariffed rate of approximately $700 for the exact same service. The cost to Pacific Bell of providing that service has not increased; however, the price for the similar loop has increased almost nine fold. This practice of ILECs distinguishing between a UNE high capacity loop and a tariffed high capacity loop must be stopped.[19]

ILECs must be compelled to provide CLEC access to high capacity loops because they are the only ubiquitous provider of these services. As the Commission is undoubtedly aware, CLECs across the country have deployed switches and lease transport to provide large businesses with competitive local exchange service. These services only exist, however, where end-user volume and line counts make it profitable for a CLEC to lease dedicated transport (from a third party provider) from its switch to the customer. The majority of CLECs do not collocate with the ILECs and therefore, are not in a position to bring local exchange competition to small business and residential consumers. If the Commission wants to encourage the development of competition in areas other than major commercial centers, it must require the ILECs to unbundle the high capacity loop.

e. Cross Connects

MGC collocates in more than 250 ILEC central offices in five states. Integral to MGC's collocation strategy is its ability to provision a cross-connect from the ILEC main distribution frame to MGC's collocated equipment. Without this connection, MGC

[19] GTE, Sprint, Ameritech, and Bellsouth price tariffed loops and unbundled loops

would not be able to provide local voice and data services through its own facilities. The Commission has defined the local loop in the following manner:

> The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and an end user customer premises.[20]

To maximize competitive opportunities to deploy advanced services, to minimize unnecessary litigation, and to minimize opportunities for the uneconomic imposition of non-cost based charges on carriers using a UNE entry strategy, the Commission's existing loop definition must be modified in several ways.

First, MGC believes that the existing loop definition must be modified to explicitly include cross connects. Simply put, loops do not work if not cross-connected. Furthermore, the cross-connect should only be charged to the CLEC on a per use basis.[21] As mentioned above, MGC purchases loops from five separate ILECs. All ILECs from whom MGC purchases loops, charge separately for the cross-connect. The cross-connect should be factored into the TELRIC price of the loop and not charged separately. The practice of charging a CLEC for a cross-connect is particularly offensive in GTE territory where GTE charges MGC a non-TELRIC rate for cross-connects. In addition, GTE requires MGC to pay for the capability of providing a loop over a cross-connect rather than merely paying for the cross-connect when it is used to provision a loop. This practice is

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in a manner similar to Pacific Bell.

20 47 C.F.R. §51.319

21 MGC purchases loops from five ILECs. Only GTE charges MGC for the capability of providing a loop. Specifically, GTE charges MGC for the number of cross-connects MGC has the capability of provisioning when it purchases a loop. In essence, GTE will charge MGC $2.10 per cross-connect. This equates to a situation where MGC is paying from 672 cross-connects when it may be only actually using 100 of the cross-connects to provision loops.

patently anti-competitive. Accordingly, it is imperative that the Commission promulgate rules that include cross-connects as part of the provisioned loop.[22]

f. The Commission Should Clarify that Loops Include All Facilities Up to the Point of Demarcation for Inside Wire – Regardless of Where the NID is Located

MGC supports the Commission's inclusion of the NID in the definition of a loop and the Commission's rule that competitors can order loops integrated with or separated from the NID.[23] It is also imperative that the ILEC provide access to the NID in a such a manner that the CLEC may efficiently connect the customer to its network. For example, MGC has experience with NID's that are in such disarray that MGC has not been able to provision a loop. More specifically, Pacific Bell routinely provides NIDs with no clear markings and often leaves tagged cables dangling by the NID with no way of tying down the loop. Not only should the Commission require that the NID be included as part of the loop, but the Commission should compel the ILECs to maintain the NID in a fashion that provides seamless access to the customer's premises.

In addition, MGC believes that it is necessary for the Commission to clarify that the loop includes all incumbent-owned facilities between the end office and the point of

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22 In the typical scenario, MGC collocates an access node which has the initial capability of provisioning 672 loops. As mentioned above, MGC pays to connect the access node to the GTE main distribution frame as a Non Recurring charge for building collocation. In this example, it costs MGC an additional $1,350.72 per month to be able to have the capability of provisioning a loop. MGC collocates in over 40 GTE central offices so this monthly recurring fee becomes a substantial barrier and to prices MGC away from lower profit margin residential service.

23 *See Local Competition First Report and Order* at ¶ 393 ("we conclude that the unavailability of access to incumbent LECs' NIDs would impair the ability of carriers deploying their own loops to provide service.")

demarcation for inside wire at the customer premises, regardless of the physical location of the NID. This clarification is necessary to resolve disputes between ILECs and CLECs over the use of ILEC-owned cabling at the customer premises. Without access to such cabling at TELRIC-based prices, CLECs cannot efficiently connect loops to a customer's inside wire.

2. The Commission Must Continue to Require Unbundled Access to the NID

Although NIDs are included in MGC's proposed definition of a loop, MGC believes that NIDs also must remain available as a distinct UNE. Without unbundled access to the NID, facilities based residential and small business competition would be all but foreclosed.

a. NIDs Meet the Section 251(d)(2) Standard for Unbundling

Like the local loop, the NID is a nonproprietary network element that qualifies for unbundling under the impairment test of Section 251(d)(2)(B).[24] Due to the dedicated, customer specific nature of NIDs, competitive alternatives are not available on a wholesale basis. Self-provisioning, although "possible" is uneconomic in many instances. This is demonstrated by the fact that all of the 80,000 loops MGC has in service are provisioned with a NID, rather than without it. As with loops, CLECs are unable to match the scope, scale, and time advantages that ILECs derive from their ubiquitous integrated plant. Indeed, without such access, CLECs would incur substantial increases in cost and delay in bringing their services to market.

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24 *Id.*

3. The Commission Must Continue to Require Unbundled Access to Interoffice Transport

The ubiquitous nature of ILEC transport remains critical to the development of local competition and to CLEC plans to provide ubiquitous local voice and data services to residential and small business consumers. At this early stage of local competition, a competitive wholesale market for ubiquitous transport facilities has not developed and unbundling remains an essential component of the infrastructure of local competition. In fact, ILECs generally interconnect their own networks through end-office transport. However, ILECs such as Pacific Bell, GTE, BellSouth, Ameritech, and Sprint require CLECs like MGC to provision transport from an ILEC central office to MGC's host switch. Therefore, ILECs currently require CLECs to deploy less efficient networks than ILEC networks. ILECs should be required to allow unbundled access to ILEC transport to provide CLECs with competitive parity with the ILEC networks.

a. Interoffice Transport Meets the Section 251(d)(2) Standard for Unbundling

Interoffice transport is a non-proprietary network element that qualifies for unbundling under the "impair" test of Section 251(d)(2)(B). In its *Local Competition First Report and Order,* the Commission determined that interoffice transport was not "proprietary."[25] The same conclusion is compelled under MGC's proposed definition of "proprietary," as interoffice transport unbundling does not involve the disclosure of CPNI or information and processes protected by intellectual property laws.

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[25] *Local Competition First Report and Order* at ¶ 446 ("Commenters do not identify any proprietary concerns relating to the provision of interoffice facilities that LECs are required to unbundle.").

In its initial "impair" analysis, the Commission found that an interoffice transport unbundling requirement would:

- "increase the speed with which competitors enter the market;"[26]
- "decrease the cost of entry compared to the *much higher* cost that would be incurred by an entrant that had to construct all of its own facilities;"[27] and
- "improve competitors' ability to design efficient network architecture, and in particular, to combine their own switching functionality with the incumbent LEC's unbundled loops."[28]

The Commission also concluded that "[a]n efficient new entrant might be able to compete if it were required to build interoffice facilities where it would be more efficient to use the incumbent LECs' facilities." These conclusions are no less valid today. Indeed, the additional delay to market and increased cost structure that would be associated with self-provisioning or obtaining transport from another non-ILEC source (to the very limited extent that such sources exist) would far exceed that which could be considered material.

Congress clearly intended that new entrants would be able to share in the advantages that result from incumbency. Unbundled access to the ILECs' ubiquitous transport network is one of the ways this is accomplished. Additionally, this notion was reconfirmed in the Commission's 706 ruling when the Commission recognized a CLEC's right to deploy functional switching equipment in collocation cages located in ILEC central offices.

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26 *Id.* at ¶ 441

27 *Id.* at ¶ 441 (emphasis added); *see also* ¶ 447.

28 *Id.* at ¶ 447 (finding that interoffice transport meets the "impair" test, as then defined by the Commission.)

Allowing CLECs to provide their own end office switching coupled with access to ILEC interoffice transport will afford CLECs such as MGC the ability to compete for residential and small business customers in a way that makes economic sense. MGC has done a study that shows approximately 50% of all traffic generated in a particular rate center originates and terminates within a 20 mile radius. However, ILECs will not allow MGC to purchase the interoffice transport to interconnect MGC collocation cages in ILEC central offices. Instead, MGC is required to purchase transport from the ILEC back to the MGC host switch which in turn is interconnected with the ILEC access tandem. In this scenario, a call to a next door neighbor could travel more than 180 miles round trip because the ILEC refuses to allow CLECs like MGC to purchase interoffice transport between ILEC central offices.[29]

Neither self-provisioning nor other non-ILEC sources are capable of approximating the ubiquity nor the cost structure of the ILECs' interoffice facilities. In its *Local Competition First Report and Order,* the Commission recognized that "there are alternative suppliers of interoffice facilities in certain areas."[30] This remains true today. However, an efficient wholesale market for interoffice transport simply has not developed. The extent to which competitive interoffice transport facilities have been

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29 In the example quoted, MGC has a host switch in Pomona, California, that is interconnected to MGC collocation equipment in Agora, California and Woodland Hills, California. Rather than allowing MGC to pass a call from Agora to Woodland Hills, which are located about ten miles apart, Pacific Bell requires MGC to pass the traffic back to its Pomona switch and route the call through Pomona rather than through a more direct route. The net result is that MGC incurs a much higher costs by complying with calls through inefficient ILEC-dictated network design rather than delivering a local call through its natural path.

30 *Id.* at ¶ 441.

built is still relatively negligible. In most cases, alternative facilities have been built for self-provisioning purposes and they have not produced excess capacity that has resulted in the development of a fluid wholesale market for such services. Indeed, in the vast majority of cases, ILEC unbundled transport is the **only** available option for meeting competitors' interoffice transport needs.

Although, a competitive wholesale market for *some* interoffice transport facilities is likely to develop, particularly in more densely populated tier one markets, this has not occurred for any type of interoffice transport in the outlying areas of major metropolitan areas, nor in rural areas. Even a limited wholesale market may still take years to develop in those areas of the country where competition is most advanced.

As the Commission recognized in its *Local Competition First Report and Order,* a transport unbundling requirement encourages the development of an efficient network architecture and promotes the ability of new entrants to combine their own facilities with those of the ILECs. Nowhere is this more essential than in markets where a wholesale market shows signs of developing.

b. The Commission Should Affirm that Its Existing Interoffice Transport Definition Requires ILECs to Provide Unbundled Access to "Entrance Facilities" and High Capacity Transport

In its *Local Competition First Report and Order,* the Commission concluded that:

> [I]ncumbent LECs must provide unbundled access to dedicated transmission facilities between LEC central offices or between those offices and those of competing carriers. This includes, at a minimum, interoffice facilities between end offices and serving wire centers (SWCs), SWCs and IXC POPs, tandem switches and SWCs, end

> offices or tandems of the incumbent LEC, and the wire centers of incumbent LECs and requesting carriers.[31]

MGC supports this conclusion and requests that the Commission explicitly reaffirm its findings in its Order on Remand. This conclusion will guarantee that facilities based competition will reach the residential and small business consumers because the essential building blocks to foster true competition will be made generally available. Consistent with the language above and in order to facilitate connectivity between ILEC and CLEC networks and elements, the Commission must clarify that unbundled interoffice transport must be made available between ILEC offices *and* between an ILEC office and a CLEC point of presence. As mentioned above, this interpretation is consistent with the 706 ruling in that it supports a CLEC's ability to provide switched calls from a collocation cage in an ILEC central office. This clarification is necessary to prevent litigation and delay, and to curb the practice of BellSouth and others who attempt to charge non-TELRIC-based rates for "entrance facilities" between their own offices and a CLEC's point of presence.

MGC also requests that the Commission explicitly affirm another of its *Local Competition First Report and Order* conclusions with respect to unbundled transport. There, the Commission found that ILECs must provide unbundled access to "all technically feasible transmission capabilities, such as DS1, DS3, and Optical Carrier services."[32] An explicit affirmation of this conclusion is necessary because, despite this language, most ILECs have resisted giving CLECs access to high speed transport. Some, ILECs, including BellSouth, have begun offering some high speed transport services.

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31 *Local Competition First Report and Order* at ¶ 440.

Thus, the ILECs cannot argue that such access is not technically feasible. In addition, they cannot argue that such access is not required under the Section 251(d)(2) standard. High speed transport is non-proprietary in nature and clearly qualifies for unbundling under the impairment test, as requesting carriers' ability to compete will be materially diminished without it. Moreover, high speed transport is essential to bringing broadband innovations to the marketplace. Thus, unbundling is not only consistent with the impairment standard, but also with the public interest and the advanced services mandate by Section 706.

c. The Commission Should Modify its Definition of Unbundled Interoffice Transport to Include Dark Fiber Transport

The Commission must allow dark fiber transport to be deemed a UNE. Again, ILECs have deployed dark fiber to account for growth in their local exchange markets. MGC and other CLECs will provide their own termination equipment, but must be afforded the opportunity to take advantage of the heavily subsidized ILEC network to provide ubiquitous service. MGC acknowledges that the Commission concluded that it did not have sufficient information to include dark fiber transport on its national list in 1996. However, based on state commission's best practices; it is appropriate for the Commission to reassess its decision.

As an initial matter, it is important to note that dark fiber qualifies as a "network element" under the definition supplied by Congress in Section 3(29).[33] There is no requirement that network elements be "telecommunications services," rather the

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32 *Id.*

definition indicates only that the equipment be of the type that is "used in the provision of a telecommunications service."[34] Unlit or dark fiber is clearly the type of equipment that can be used in provisioning a telecommunications service. Otherwise, ILECs would not own it and CLECs would not want unbundled access to it. As a "network element," dark fiber is subject to unbundling under Section 251(c)(3), provided the Section 251(d)(2) standard is met.

Under Section 251(d)(2), the "impair" test applies, as "dark fiber" does not qualify as a proprietary network element. For the same reasons described with respect to "lit" interoffice transport above, requesting carriers' ability to compete has been and will continue to be materially diminished if unbundling is not required. Further, there are no legal or policy reasons that justify segregating these transport facilities from others in the ILECs' ubiquitous transport network. Indeed, the public interest would be served well by providing ILECs a return on this idle plant.

3. The Commission Must Continue to Require Unbundled Access to Operations Support Systems

Access to ILEC OSS is required by the section 271 fourteen point checklist and the requirements of the section 251 (d)(2). CLECs such as MGC may only order and provision loops and transport from ILECs if CLECs are afforded complete access to ILEC Operations and Support Systems. ILECs are in the precarious position of being the number one competitor of CLECs as well as being their number one supplier of loops. Therefore, for parity to be maintained, CLECs must be afforded the same access to ILEC ordering and provisioning systems as the ILEC. There is absolutely no alternative to

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33 47 U.S.C. § 153(29).

ILEC OSS systems for pre-ordering customer service records and ordering loops and transport. In order for competition to truly flourish, ILEC OSS must remain a 271 checklist item as well as a UNE.

4. Inside Wire Should Be Defined as a New UNE

MGC applauds the Commission for recognizing the importance of inside wire in the *FNPRM*, and strongly supports the adoption of ILEC-owned inside wire as a new UNE.[35] Presently, access to inside wire represents one of the most formidable barriers to new entrants seeking to compete for customers in business and residential multi-tenant environments ("MTEs"). The convoluted nature of inside wire ownership rules and the difficulties engendered by dealing with individual landlords contribute to this problem.[36] Admittedly, adopting an inside wire UNE would address only those barriers caused by ILEC ownership of inside wire. Nevertheless, the Commission should not hesitate to address obstacles associated with the ILECs' bottleneck control over the "last hundred feet." Adding inside wire to the Commission's national minimum unbundling requirements is the best way of removing such obstacles and encouraging facilities-based competition for customers in MTEs as well as ensuring quality customer service for other CLEC customers.

Generally, when trouble is reported on a loop MGC has purchased from an ILEC, it must coordinate with the ILEC to isolate the trouble. The ILEC's maintenance

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34 *Id.*

35 *FNPRM*, ¶ 33.

36 Whether ILEC owns inside wire depends on when the building was constructed, standard industry practices (which can vary by state and ILEC), and whether there are supervening state regulations.

responsibility currently begins at the ILEC central office and ends at the NID. The CLECs' responsibility is from the jack panel to the NID. Unfortunately, too often when MGC and the ILEC try to coordinate to isolate trouble on a loop neither side can isolate it. Therefore, if the ILEC were responsible for testing a loop all the way through to the jack panel (inside wire), instances of trouble would be greatly reduced and would be more quickly resolved. Ultimately the consumer will benefit through less downtime and better isolation of trouble over the loop.

Inside wire meets the "impair" standard of Section 251(d)(2)(B).[37] The cost and complexity of rewiring existing buildings can add thousands of dollars to the cost of serving customers in a MTE.[38] Unlike ILECs who typically have been given free access to install inside wire facilities during initial construction of buildings, CLECs, if forced to duplicate this plant, must deal with myriad hurdles, both in time and money, in drilling through floors and cabling elevator shafts, during and after business hours. As with the loop and the NID, existing ILEC inside wire provides incumbents with material cost and time-to-service advantages. Without unbundled access, CLECs may have to forego MTE entry altogether, or do so only in states that have recognized the importance of proving access to the *entire* ILEC-owned link to end users. Thus, consistent with the pro-competitive goals of the 1996 Act and the specific unbundling standards of Section 251, the Commission should add ILEC-owned inside wire to its national minimum list of unbundling requirements.

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37 Inside wire is not "proprietary," as defined by MGC, and thus, the "necessary " standard of Section 251(d)(2)(A) does not apply.

38 Self-provisioning is the only alternative to ILEC unbundling. Other non-ILEC alternatives do not exist.

To facilitate the unbundling of inside wire and to expedite competitive entry, MGC submits that the Commission also must require ILECs to make readily available on their websites, reports indicating the buildings in which they own inside wire.[39] The Commission also should make clear that CLECs must have access to unbundled inside wire without the discriminatory costs and delays imposed by ILEC-imposed requirements that ILEC personnel be present. Without such an explicit restriction, CLECs' ability to obtain unbundled access to inside wire at TELRIC-based rates will be rendered meaningless by the costs involved with ILEC-imposed dispatch and coordination.

IV. THE NECESSARY AND IMPAIR STANDARD AS ARTICULATED BY ALTS LOGICALLY REQUIRES THE COMMISSION TO RETIRE SEVERAL EXISTING UNE'S.

The necessary and impair standard adopted by MGC suggests that certain existing UNEs articulated in the Commissions initial report on local competition may be extinguished with no adverse effects on the development of local competition. MGC suggests that switching, operator services and directory assistance, as well as SS-7 signalling be retired as existing UNE's. MGC feels compelled to make this suggestion because its articulation of the necessary and impair standard logically require such a conclusion.

1. Switching

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39 The Commission recently adopted a similar requirement with regard to space availability for collocation in ILEC end offices. *Advanced Services Collocation Order,* ¶ 58.

MGC currently provides switched voice and data services through the deployment Nortel DMS 500 switches. MGC does not need to acquire switching capability from the ILEC. The switches MGC has deployed are generally available to all CLECs to purchase from Nortel, Lucent, or any other third party switch vendor. Therefore, competitors are not dependent on the ILEC for switching.

2. Operator Services and Directory Assistance

Currently, MGC and other CLECs may purchase Operator Services and Directory Assistance Services from a number of vendors offering cost effective national-in-scope alternatives to the ILECs product offering. MGC purchases Operator Services and Directory Assistance from several vendors, several of when which include non-ILECs. Sufficient competitive markets exist for this product and it should therefore be retired as a UNE.

3. SS-7 Signalling

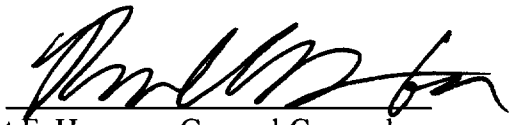
MGC purchases SS-7 signalling from non-ILEC vendors. The SS-7 signalling is made generally available on a national basis and in a cost-effective manner. Therefore, MGC believes that competition will not be prejudiced if the Commission decides that SS-7 signalling should no longer be classified as a UNE.

V. Conclusion

If the Commission wants to spur facilities based voice and data competition in the local exchange residential and small business market it must adopt a national list of UNEs' as articulated by one of the only CLECs actually providing facilities based residential and small business voice and data services. Specifically, the Commission must allow Loops, Interoffice Transport, High Capacity Transport, Operations and Support Systems, Inside Wire to be classified as UNEs. Only then will more residential and small business consumers will benefit from the availability of competitive services, contemplated by the Act.

Respectfully submitted,

MGC COMMUNICATIONS, INC.

By: 

Kent F. Heyman, General Counsel
Scott A. Sarem, Assistant Vice President
Richard E. Heatter, Assistant Vice President
MGC COMMUNICATIONS, INC.
3301 N. Buffalo Drive
Las Vegas, NV 89129
(702) 310-1000